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Easement and Declaration of Restrictions and Covenants, May 6, 1997

EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS

THIS EASEMENT AND DECLARATION is made this 6 day of May, 1997,
by the city of Waite Park.

WITNESSETH:

WHEREAS, the city of Waite Park, a political subdivision and municipal corporation of the state of Minnesota, is the fee owner of certain real property located in Stearns County, Minnesota, as described herein (the "Property"); and

WHEREAS, the Property is the location of release(s) of certain hazardous substances or pollutants and contaminants as defined by Minn. Stat. § 115B.02 and is part of a site known as the Burlington Northern Car Shop - Waite Park Superfund site (the "Site") which is listed on the State Permanent List of Priorities under Minn. Stat. § 115B.17, subd. 13 and the National Priority List under 42 U.S.C. § 9605; and

WHEREAS, the Minnesota Pollution Control Agency ("MPCA") issued a Request for Response Action regarding the Site pursuant to Minn. Stat. § 115B.17 on October 22, 1985, to the Burlington Northern Railroad Company (BN); and

WHEREAS, the MPCA has approved and intends to approve response actions that are reasonable and necessary to protect public health and the environment from releases at or from the Site; and

WHEREAS, the city of Waite Park has acquired a portion of the Site from BN and has agreed to place the Easement and Declaration of Restrictions and Covenants (Easement and Declaration) on the Property that it owns and which is hereinafter described to assure that response actions implemented at the Site continue to protect public health and the environment.

NOW, THEREFORE, pursuant to authority vested in the city of Waite Park by Minn. Stat. § 412.211 and (action or resolution) of the City Council on May 6, 1997, the city of

the MPCA or his successor (the "Commissioner"). The Commissioner's approval may include conditions which the Commissioner deems reasonable and necessary to protect public health or the environment, and shall not be unreasonably withheld. The ground water may be impacted by volatile organic compounds, polychlorinated biphenols and polynuclear aromatic hydrocarbons as specified in Exhibit 2. The MPCA is currently overseeing BN's ground water investigation and remediation activities.

(c) The following requirements must be followed regarding soils in each of the three areas of the Property as defined below:

(1) Area 1. Soil in Area 1 is believed to meet the MPCA soil cleanup standards for the commercial and industrial uses allowed under this Easement and Declaration. However, this soil may not be acceptable as clean fill off-site. Therefore, soil excavated from Area 1 on the Property shall not be removed from the Property or, if removed, shall be removed and disposed of in accordance with a Contingency Plan approved by the Commissioner. Area 1 comprises all portions of the Property not contained in Areas 2 and 3 as defined below.

(2) Area 2. Several portions of the Property exhibit soil contamination but meet the MPCA soil cleanup standards for commercial and industrial use. The location of these soils are collectively defined as Area 2, which is depicted in Exhibit 3 and 4. Any soil excavated in Area 2 shall be replaced in the excavation, used as fill on the Property, or, if removed, shall be removed and disposed of in accordance with a Contingency Plan approved by the Commissioner. Soil excavated in Area 2 and used as fill on the Property shall be covered with clean soil and vegetated or shall be buried under parking lots. The location of any Area 2 soil used as fill shall be surveyed and a copy of the survey provided to the MPCA.

(3) Area 3. Area 3 contains soil that exceeds the MPCA soil cleanup standards (Exhibit 2) and is currently being addressed by BN with the MPCA's oversight. Prior to BN's completion of response actions in this area there shall be no disturbance or alteration on, above, or beneath Area 3 of any nature whatsoever, specifically including, but not limited to, grading, excavation, boring, drilling or construction without the prior written approval of the Commissioner. Area 3 is that portion of the Property located within 150 feet radius of Test Trench 3 (TT3), as depicted in Exhibit 4 and 4a.

The Commissioner's approval of any proposed actions or contingency plans may include conditions which the Commissioner deems reasonable and necessary to protect public health or the environment, and shall not be unreasonably withheld.

4. Covenants.

The Grantor hereby covenants that the Property shall not be held, transferred, sold, conveyed, occupied, altered, or used in violation of the Restrictions set forth in Section 3 of this Easement and Declaration.

5. Reservations.

Nothing contained in this Easement and Declaration shall in any way prohibit, restrict or limit the Grantor from fully conveying, transferring, occupying or using the Property for all purposes not inconsistent with the Restrictions.

6. Grant and Conveyance to MPCA: Right of Entry.

Subject to the terms and conditions of this Easement and Declaration, the Grantor hereby grants and conveys to the MPCA and its successors, MPCA's employees, contractors and agents, the right to enter the Property to take or oversee implementation of reasonable and necessary response actions on the Property pursuant to Minn. Stat. §§ 115B.01 to 115B.18 and to enforce and verify compliance with the Restrictions set forth in Section 3 of this Easement and

Declaration. The Commissioner agrees that in exercising this right, the Commissioner shall provide reasonable notice to the then-current owner, enter at reasonable times, and to avoid unreasonable interference with any Uses of the Property that are in compliance with the Restrictions.

7. Amendment.

This Easement and Declaration and the covenants, grants and Restrictions herein continue until terminated, modified released and/or amended with the written consent of the Commissioner or his successor, such consent not to be unreasonably withheld. Notwithstanding the foregoing, this Easement and Declaration and the covenants, grants and Restrictions set forth herein may be terminated, modified, released and/or amended upon the occurrence and satisfaction of the following conditions:

(a) soil or ground water sampling is conducted on the Property with prior written notice to and in accordance with a plan approved by the MPCA, such approval not to be unreasonably withheld; and

(b) based on such samples the MPCA determines that the soil/ground water/surface waters no longer pose a potential threat to human health and that disturbance of such soil or ground water will not hinder any biodegradation of any remaining contamination.

In the event of a termination, modification, release and/or amendment of this Easement and Declaration, the Commissioner, within 60 days after receipt of written request from the owner of the Property, shall execute an instrument in recordable form, terminating, releasing, modifying and/or amending this Easement and Declaration.

8. Binding Effect.

The Restrictions declared and the rights and interest granted under this Easement and Declaration shall run with the Property and bind the Grantor, its successors or assigns, all present

or future owners of the Property, and all parties who now or hereafter have or hold any right, title or interest in or to the Property.

9. Action By Commissioner.

Where this Easement and Declaration of Restrictions authorizes or requires an action by the MPCA or its successors, the action is effective if taken by the MPCA Commissioner or his successor(s).

In Witness Whereof, this instrument has been executed on the day and year first above written.

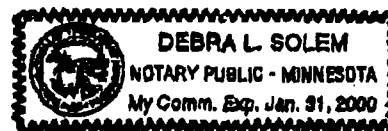
The City of Waite Park

By 
Richard Miller
Its Mayor

STATE OF MINNESOTA)
) SS.
COUNTY OF STEARNS)

The foregoing instrument was acknowledged before me this 9th day of May, 1997, by ~~Richard Miller, the Mayor of the City of Waite Park, a municipal corporation under the laws of the State of Minnesota, on behalf of said municipal corporation.~~ Richard Miller, the Mayor of the City of Waite Park, a municipal corporation under the laws of the State of Minnesota, on behalf of said municipal corporation.


Notary Public



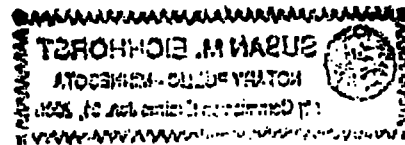
By: Peder A. Larson
Peder A. Larson
Commissioner

SURAN M. EICH-ORST
NOTARY PUBLIC - MISSOURI
My Commission Expires Jan. 31, 2009

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Exhibit 3. Impacted Soil. January 10, 1997, Braun Intertec figure depicting sulfur soils;
completed boundaries for Area C lagoon excavations - soil impacted with CaOH, PCBs
and Lead may exist along the utility corridor on the northern boundary of Area C lagoon
excavation; and Area B Pond.

Exhibit 4 and 4a. August 8, 1996, and March 26, 1997, Remediation Technologies Inc. figure
depicting Impacted Soil and Restricted Area



Attachments

Exhibit 1. Figure of Property and Land Description

Exhibit 2. Table 1: Soil Contaminants of Concern and Soil Remediation Levels;

Table 2: Ground Water Contaminants of Concern and Ground Water Monitoring Requirements.

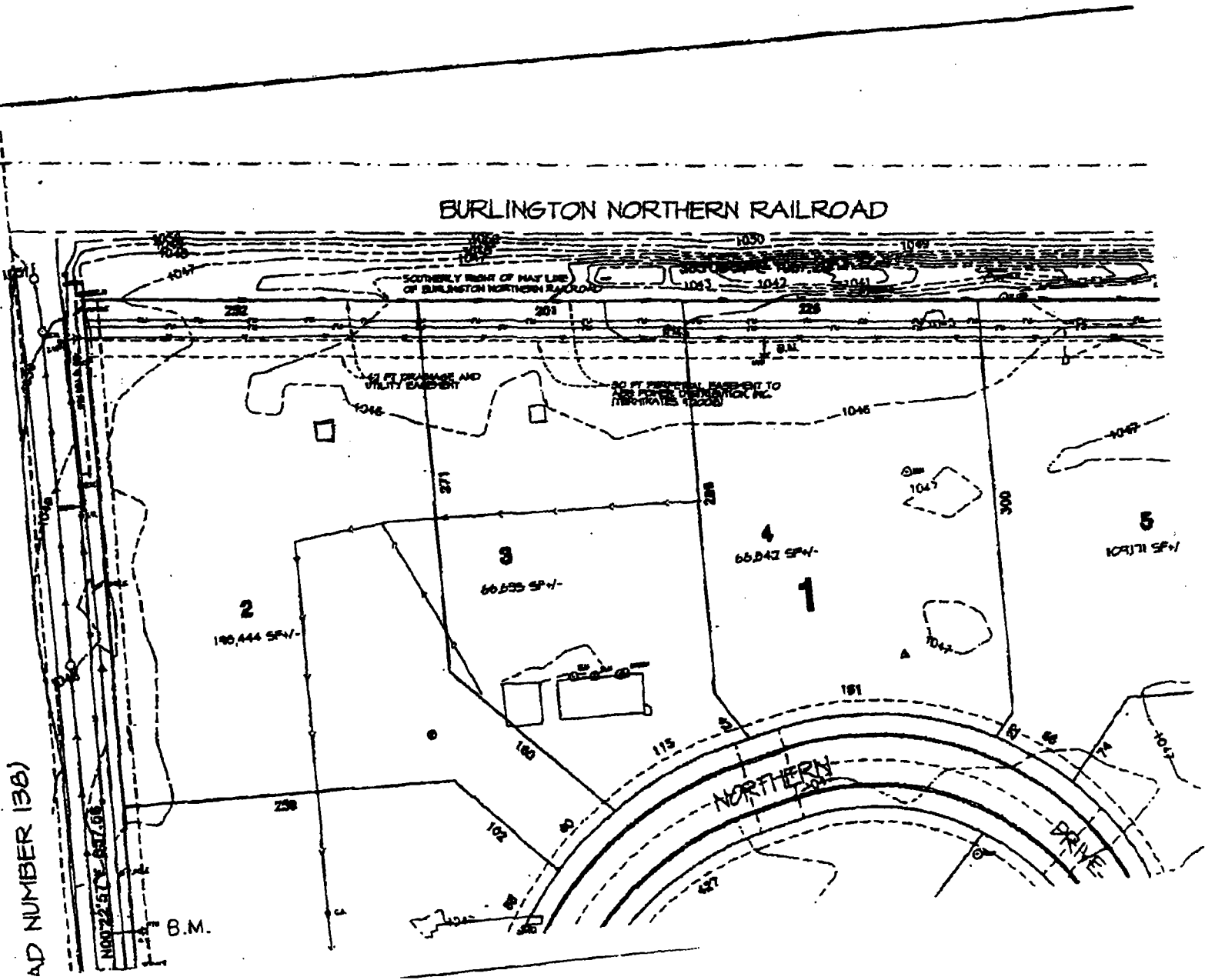
Table 1 and 2 from July 14, 1996 Record of Decision

Exhibit 3. Impacted Soil. January 10, 1997 Braun Interloc figure depicting sulfur soils; completed boundaries for Area C lagoon excavations - soil impacted with CaOH, PCBs and Lead may exist along the utility corridor on the northern boundary of Area C lagoon excavation; and Area B Pond.

Exhibit 4 and 4a. August 8, 1996 and March 26, 1997 Remediation Technologies Inc. figure depicting Impacted Soil and Restricted Area

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AD NUMBER (38)



10TH AVENUE NORTH

2

1

22,546 SF +/-

EASTERLY RIGHT OF WAY
LINE OF 10TH AVENUE NO.
COUNTY ROAD 158

3RD

STREET

NORTH

IN CORNER OF THE
SE1/4 OF THE SE1/4
SEC. 8, T40N, R30W,
STEARNS COUNTY, EAST
ROCK MOUNTAIN

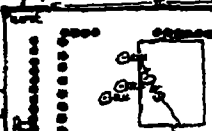
B.M.

B.M.

N 89°00'00" E 137.42
SOUTH LINE OF THE SE1/4 OF SE1/4

20 FT DRAINAGE AND UTILITY EASEMENT

16 FT DRAINAGE AND
UTILITY EASEMENT



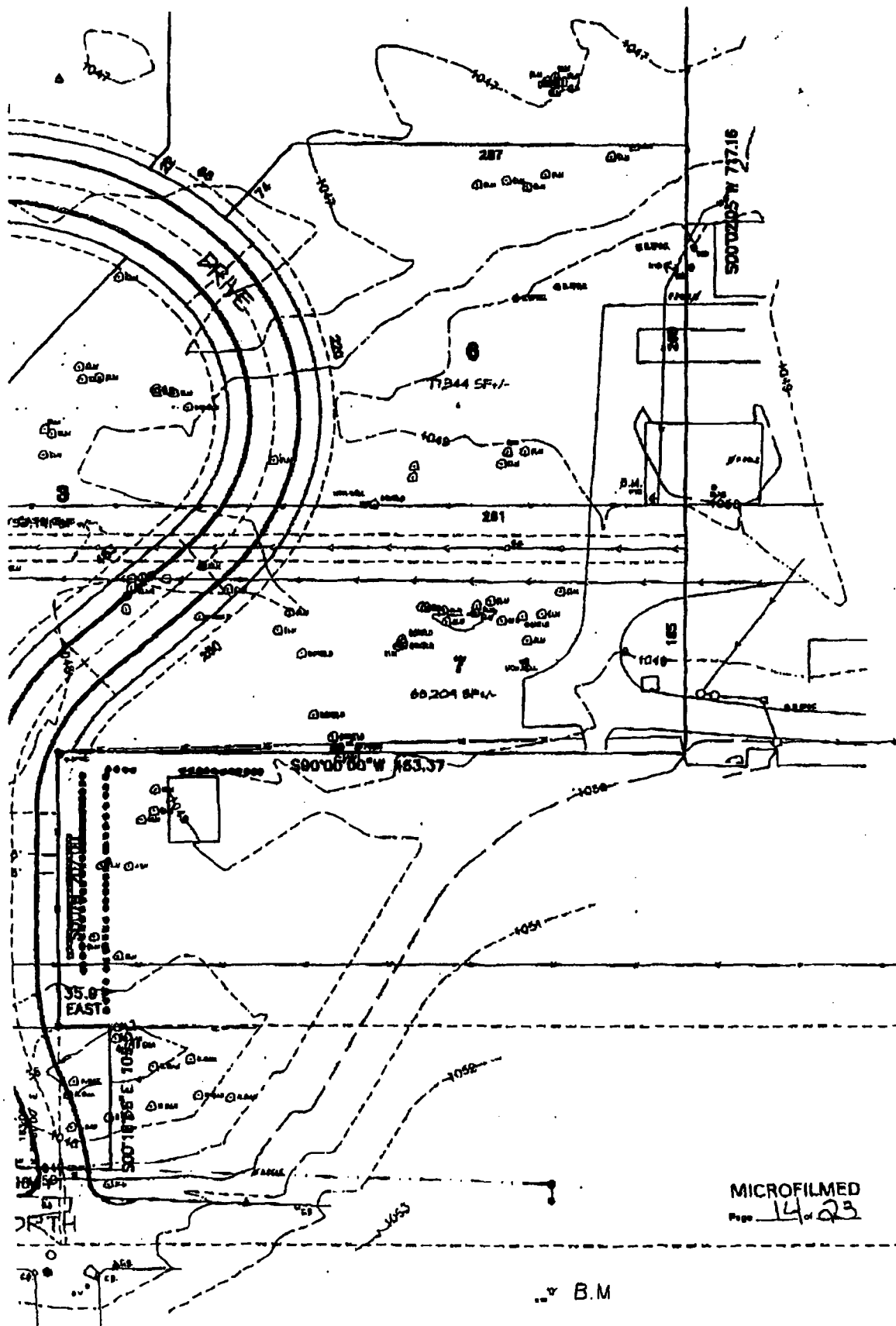
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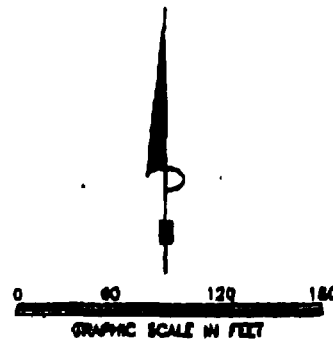
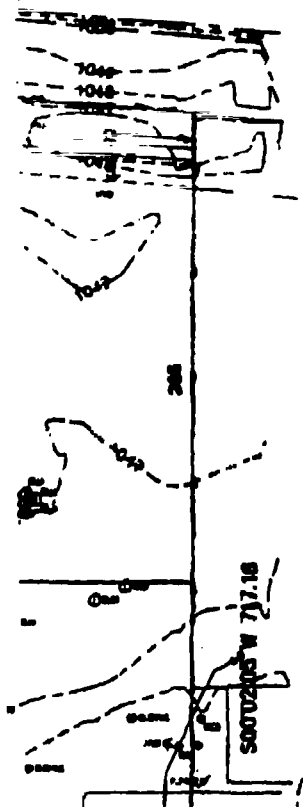


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B.M

EST RIVER BUSINESS PARK

PRELIMINARY PLAT



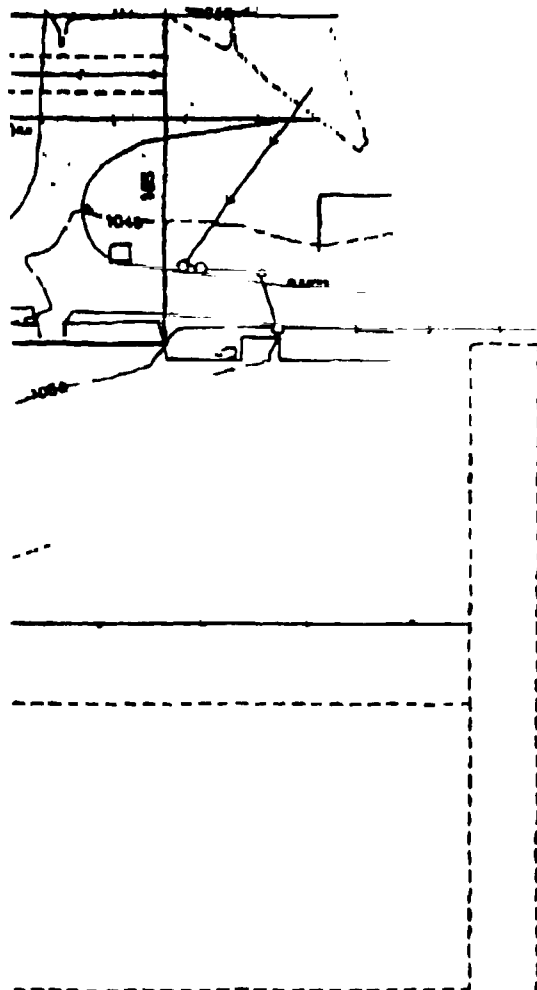
OWNER:
The City of Maple Park
19 13th Avenue North
Maple Park, MN 56567

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15.23

DATE: 15 MARCH 1996	REVISION: 30 MARCH 1996
DRAWN BY: S. J. G. 1996	PREPARED BY: FEBRUARY 1997
DESIGNED BY: HOLLANDSON	
SCALE: 1" = 60' 0"	

AND ASSOCIATES, INC.
SAINT GERMAIN
MN 56301

GENERAL PLAZA 10 8TH STREET NORTH CLOUD, MN 56303 PHONE 320.251.4533 CLOUT 320.251.6723	<p>R.A. MORTON AND ASSOCIATES, INC.</p> <p>821 WEST SAINT GERMAIN</p> <p>ST. CLOUD, MN 56301</p>	<p>DATE _____</p> <p>DEAL _____</p> <p>DEED _____</p> <p>SUM _____</p>
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B.M.

LAND DESCRIPTION

That part of the Southwest Quarter of the Southeast Quarter of Section 8, Township 124 North, Range 28 West, Stearns County, Minnesota described as follows: Commencing at the southwest corner of the said Southwest Quarter of the Southeast Quarter, thence North 40 degrees 00 minutes 00 seconds East, along the south line of the said Southwest Quarter of the Southeast Quarter, a distance of 857.42 feet, thence North 00 degrees 00 minutes 00 seconds East a distance of 188.00 feet to the actual point of beginning; thence North 40 degrees 00 minutes 00 seconds East a distance of 35.91 feet, thence South 00 degrees 00 minutes 00 seconds East a distance of 108.57 feet to the northerly right of way line of 3rd Street North, thence North 88 degrees 05 minutes 15 seconds West a distance of 146.11 feet, thence North 88 degrees 10 minutes 28 seconds West, along said right of way line, a distance of 180.48 feet, thence North 84 degrees 54 minutes 30 seconds West, along said right of way line, a distance of 178.00 feet, thence North 90 degrees 02 minutes 04 seconds West, along said right of way line, a distance of 100.38 feet to the easterly right of way line of 10th Avenue North (County Road Number 138), thence North 05 degrees 28 minutes 54 seconds West, along said right of way line, a distance of 180.84 feet, thence North 00 degrees 22 minutes 57 seconds East a distance of 887.86 feet to the southerly right of way line of Burlington North Railroad, thence South 88 degrees 06 minutes 57 seconds East a distance of 1087.20 feet, thence South 00 degrees 02 minutes 09 seconds West a distance of 717.6 feet, thence South 40 degrees 00 minutes 00 seconds West a distance of 498.37 feet, thence South 00 degrees 00 minutes 00 seconds West a distance of 207.00 feet to the point of beginning.

Reserving a perpetual 30.00 foot drainage easement over, under and across said tract. The centerline of said 30.00 foot easement begins on the west line of said tract distant 684.75 feet south of the northwest corner of said tract, thence east to a point on the east line of said tract distant 564.75 feet south of the northeast corner of said tract and terminates said easement.

Also reserving a perpetual 42.00 foot utility easement over, under and across the north 42.00 feet thereof.

Subject to a 30 foot perpetual easement to ABB Power Distribution, Inc. over the north 30.00 feet thereof and said easement to terminate 4/30/08.

EXHIBIT 1

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17-23

CERTIFICATE PLAT 2004 8th STREET NORTH ST. CLOUD, MN 56303 TELEPHONE 320.251.4633 TELECOPY 320.251.4632		CLERK
Bonestroo Engineer - Architects	Williamson Surveyors	1 of 1
BY ALL HANDS 46217		1

Table 1

Soil Contaminants of Concern
Soil Remediation Levels
for Organic and Semivolatile Solids
Burlington Northern Car Shop Site, Waite Park, Minnesota

Matrix/Compound	Concentration Detected in the Soils (1)		Background (3)	Remediation Level (4)		Confirmation Sampling Method
	Operable Unit 1 Leopold Area	Operable Unit 2 Sandblast Sands		Unrestricted Land Use	Commercial/Industrial Land Use	
	mg/kg	mg/kg	mg/kg	mg/kg	mg/kg	
Metals						
Arsenic (c)	0.6/42	0.53/18	1.2/5.7 (3.5)	10	20	EO10/7060
Cadmium	0.9/4.9	0.5/2.8	ND	10	270	EO10/7130
Lead	8.5/120,000	5.3/17,000	14/170 (39.5)	500	1000	EO10/7420
Semi-Volatile Organic Compounds (SVOCs)						
Anthracene	NA	NA	0.065/1 (0.227)	NGA	NGA	9270
Benzophenanthrene	NA	NA	ND	NGA	NGA	9270
Fluoranthene	NA	NA	0.094/4.6 (0.934)	NGA	NGA	9270
Fluorene	NA	NA	0.062/0.12 (0.033)	NGA	NGA	9270
Naphthalene	NA	NA	0.027/0.031 (0.011)	NGA	NGA	9270
Phenanthrene	NA	NA	0.058/3 (0.543)	NGA	NGA	9270
Pyrene	NA	NA	0.068/2.7 (0.433)	NGA	NGA	9270
total cPAHs (c)	NA	NA	ND/23 (4.0)	NGA	NGA	9270
Polychlorinated Biphenols (PCBs)						
PCBs, total (c)	ND/570	NA	NA		M	9080

(1) Freachable minimum and maximum values detected during investigative studies.

(2) Operable Unit 2 also includes the contaminated dirt floor of the Paint Building.

The minimum/maximum concentrations of lead detected in the soils from the dirt floor of the Paint Building are 800/20,000 mg/kg. The detected concentrations for TCLP soil analysis for lead is 4,000.0. The minimum/maximum concentrations of cadmium detected in the dust samples from the Paint Building are ND/180 mg/kg. The detected concentrations for TCLP soil analysis for cadmium is <0.001.

(3) Representative Site-specific background concentrations developed during Site investigations.

(4) Unrestricted land use applies to Area A. Industrial land use applies to Areas B through D.

(c) = carcinogenic

ND = Not Detected

NA = Not Analyzed

NGA = No Goal Assigned. A goal was not assigned at this time due to lack of analysis. A goal may be assigned based on the results of confirmation sampling.

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EXHIBIT 2

Table 2

Ground Water Contaminants of Concern
Ground Water Monitoring Requirements
Redington Northern Car Shop Site, White Park, Minnesota

Matrix/Compound	Concentrations Detected in the Ground Water (1)			Minnesota Background Concentrations (2)	RSL (3)	MCL (4)	HPL (5)	Aquatic Life Grand MCL (6)	Ground Water Monitoring Method (7)
	Area A Lagoon	Area C Lagoon	Other						
	mg/L or ug/L	mg/L or ug/L	mg/L or ug/L	mg/L or ug/L	mg/L or ug/L	mg/L or ug/L	mg/L or ug/L		
Metals									
Arsenic (c)	7.0/17	ND	ND	1 to 56	0.2	50 (7)		360	7050
Cadmium	ND	ND	ND	0.005 to 21	4	5	4	133	7131/6010
Lead	ND	31/31	ND	.1 to 1800	20	15		388	7421
Volatile Organic Compounds (VOCs)									
Tetrachloroethane (PCE)	1/1	ND	0.1/61	-	7	5		478	4650
Trichloroethane (TCE)	0.2/3.0	ND	0.1/100	-	30	5		6988	4650
Semi-Volatile Organic Compounds (SVOCs)									
Anthracene	ND	ND	0.15/19	-	7000		2000	1.6	3270mod
Fluoranthene	0.16/0.36	0.16/0.48	0.1/4.0	-	300			199	3270mod
Acenaphthene	ND	0.2/1.3	0.25/49	-	300				3270mod
Naphthalene	1.7/1.7	ND	0.7/740	-	30				3270mod
Phenanthrene	ND	0.42/1.4	0.27/40	-				53	3270mod
Pyrene	0.34/0.34	0.4/2.2	0.15/14	-	200		200		3270mod
total oPAHs (c)	ND/3.2	ND/16.1	ND/73.8	-	0.03	0.3 (B+P)			3270mod
total nPAHs	ND/5.8	ND/16.2	ND/1425	-	0.3				3270mod
Polychlorinated Biphenols (PCBs)									
PCBs, total (c)	ND/3.7	2.6/220	ND	-		0.5		1	8080

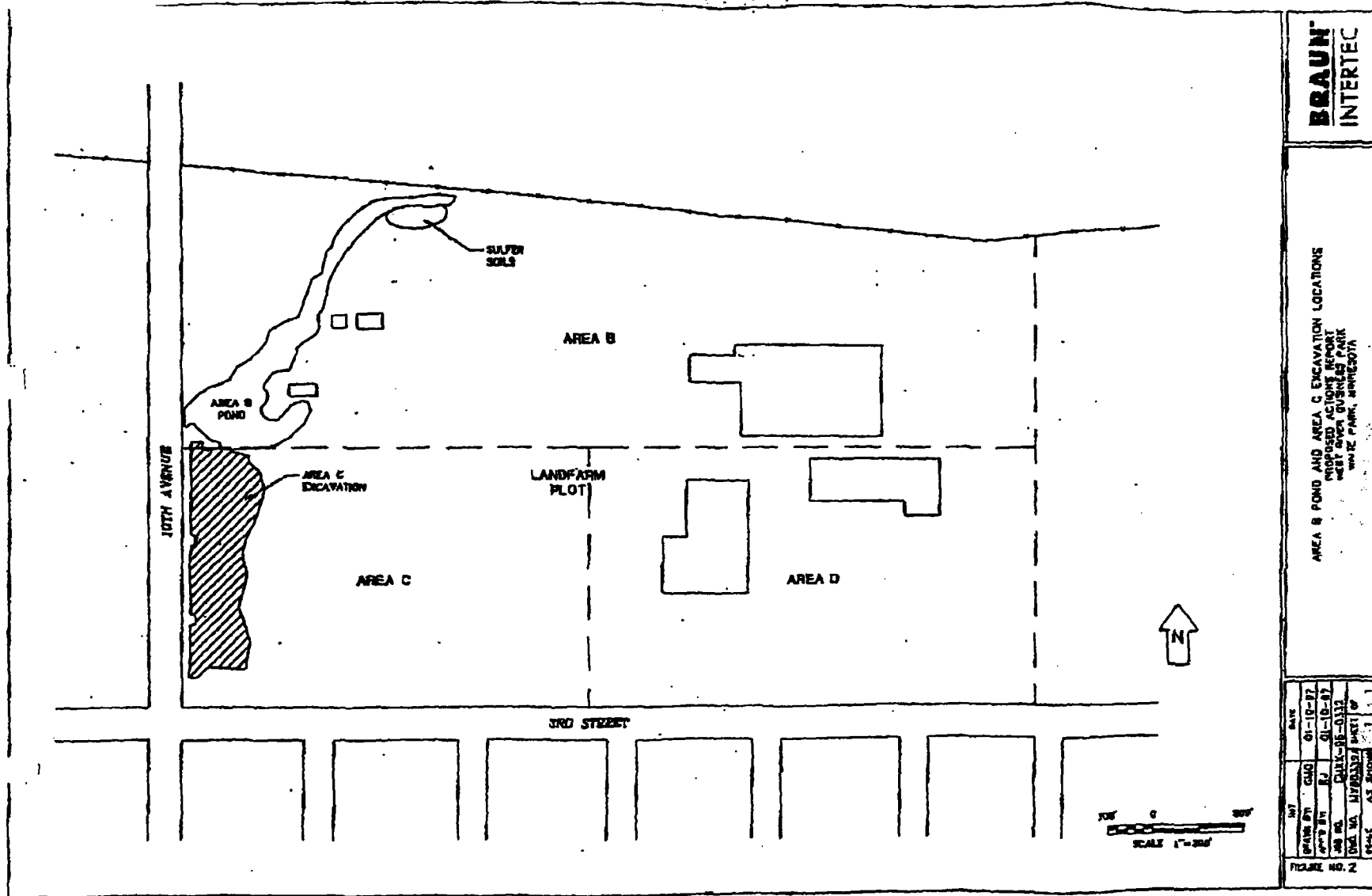
Footnotes:

- (1) Where minimum and maximum numbers are shown, the compound was only detected once.
 (2) Minnesota Background Concentrations from the Ambient Network, 1992, developed by the MPCA, GWSP Program Development Section.
 (3) Minnesota Department of Health (MDH) Recommended Allowable Limits (RAL) for Drinking Water. RALs are health based and apply primarily to private water supplies, for which there are no standards regulating levels of drinking water contaminants.
 (4) Maximum Contaminant Level. Maximum permissible level of a contaminant in water which is delivered to any part of a public water system. The MCLs may not be health based.
 (5) Health Risk Under Review are applied to substances found in depths beneath ground water. HPLs are health based and will supersede RALs where appropriate.
 (6) Aquatic Life Standards, Maximum Standard, shall apply to the point where surface water meets ground water. For this site, the ground water monitoring well closest to the dock over two channels. A new well, installed at the point where ground water meets surface water, is an acceptable replacement.
 (7) The MCL for Arsenic is 50 ug/L. According to Charles Abney, EPA, the 50 ug/L is based on an assumed consumption of 300 cubic feet daily. The assumption should be 30 to 50 ug/day.
 ND = not detected
 NA = not analyzed
 B+P = Benz(a)pyrene

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EXHIBIT 2

IN. J. 200



BRAUN
INTERTEC

AREA B POND AND AREA C EXCAVATION LOCATIONS
PROPOSED ACTION REPORT
WATERWORKS DIVISION
ST. LOUIS, MISSOURI

NO.	DATE	BY	FOR
1	01-10-77	GMG	GMG
2	01-10-81	BJ	BJ
3	01-10-83	GMG	GMG
4	01-10-83	GMG	GMG
5	01-10-83	GMG	GMG
6	01-10-83	GMG	GMG
7	01-10-83	GMG	GMG
8	01-10-83	GMG	GMG
9	01-10-83	GMG	GMG
10	01-10-83	GMG	GMG

EXHIBIT 3

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